IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 15TH JUNE 2007 / 25TH JYAISHTA 1929

WP(C).No. 18380 of 2007(K)

IA 5556/06 IN AS.156/2006 of PRL.SUB COURT, KOZHIKODE
OS.388/2003 of ADDL.M.C.,KOZHIKODE-II

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PETITIONER: PETITIONER

PRAKKULANGARA RADHA,
S/O.CHINNAMMU AMMA,
AGED 58 YEARS, 'RESHMI' VALAYANAD AMSOM DESOM
KOZHIKODE TALUK.

BY ADV. SRI.K.RAMACHANDRAN
SRI.P.RAMACHANDRAN

RESPONDENT: RESPONDENT

D.WILSON.S/O.DANIYAL,24/1594,PALLAVI,
VALAYANAD AMSOM DESOM,KOZHIKODE TALUK.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

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W.P.(C) No. 18380 OF 2007 K
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Dated this the 15th June, 2007

J U D G M E N T

This writ petition is preferred against the order in I.A. No. 5556/06 in A.S. No. 156/06. It is an appeal preferred by the defendant in the suit. As per the decree the defendant is directed to vacate the plaint schedule building within one month, (2) is directed to pay a sum of Rs. 8937/- with interest at the rate of 6%, (3) is directed to pay an amount of Rs.1,750/- per month towards damages for use and occupation, (4) restrain by a permanent injunction from trespassing into the plaint schedule property in future and also the costs. It is against the said judgment and decree the appeal was preferred. The learned Subordinate Judge by a one sentence order stayed the execution of the entire decree till the disposal of the appeal. The learned Subordinate Judge has lost sight of the provisions of Order XLI Rule 5, 6 etc. which mandates that when there is a decree for money the stay can be granted only on furnishing security for the amount. The learned Subordinate Judge has also not

considered the serious objections raised by party. Therefore, the order under challenge is not to be sustained and it is set aside and the learned Subordinate Judge is directed to reconsider I.A. No. 5556/06 in the light of the averments in the stay petition as well as the objections and pass an order accordingly. Any how till a final order is passed in that application the portions of the decree which orders for surrender of possession shall remain stayed. Stay application may be disposed of within a period of one month.

M.N. KRISHNAN
JUDGE

jan/